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<p style="text-align: right;">Page 14</p> <p>1 promote IMG mainstream websites?</p> <p>2 A. No.</p> <p>3 Q. Does IMG own commercial websites that sell</p> <p>4 access to sexually-oriented pictures?</p> <p>09:22:29 5 A. Does -- I'm sorry? Rephrase.</p> <p>6 Q. Does IMG own websites that sell access to</p> <p>7 sexually-oriented pictures?</p> <p>8 A. Yes.</p> <p>9 MR. APGOOD: Object to the form of the</p> <p>09:22:42 10 question.</p> <p>11 MR. FREEMAN: Join.</p> <p>12 Q. Does IMG operate websites to sell access to</p> <p>13 sexually-oriented pictures?</p> <p>14 MR. APGOOD: Object to the form of the</p> <p>09:22:52 15 question.</p> <p>16 MR. FREEMAN: Object to form.</p> <p>17 A. Yes.</p> <p>18 Q. What areas of business is IMG involved in</p> <p>19 other than adult entertainment?</p> <p>09:23:03 20 MR. APGOOD: Objection, calls for</p> <p>21 speculation.</p> <p>22 A. Mainstream marketing.</p> <p>23 Q. What kind of products?</p> <p>24 A. There's car parts, there's also Pocket Bikes</p> <p>09:23:28 25 and stock photography.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Who is responsible for maintaining IMG's</p> <p>2 websites?</p> <p>3 MR. APGOOD: Object to the form of the</p> <p>4 question, objection, calls for speculation.</p> <p>09:24:48 5 MR. FREEMAN: Join.</p> <p>6 A. Both myself and Seth Schermerhorn.</p> <p>7 (Recess.)</p> <p>8 Q. Who at IMG decides whether a new website</p> <p>9 should be added?</p> <p>09:28:38 10 A. Seth Schermerhorn.</p> <p>11 Q. And who decides whether an existing website</p> <p>12 should be taken down?</p> <p>13 MR. FREEMAN: Object to the form of the</p> <p>14 question.</p> <p>09:28:44 15 A. Seth Schermerhorn.</p> <p>16 Q. To your knowledge, does IMG own the pictures</p> <p>17 posted on its websites?</p> <p>18 MR. FREEMAN: Object to the form of the</p> <p>19 question.</p> <p>09:28:59 20 A. No.</p> <p>21 Q. To your knowledge, does IMG own some of the</p> <p>22 pictures posted on its websites?</p> <p>23 A. We own rights to pictures on websites.</p> <p>24 Q. Are you currently employed by IMG?</p> <p>09:29:24 25 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Anything else?</p> <p>2 A. And then just general case-by-case site</p> <p>3 design for miscellaneous companies.</p> <p>4 Q. Does IMG do site design for other adult</p> <p>09:23:53 5 entertainment companies?</p> <p>6 A. No.</p> <p>7 MR. APGOOD: Objection, calls for</p> <p>8 speculation.</p> <p>9 Q. Who owns IMG?</p> <p>09:24:01 10 A. Seth Schermerhorn.</p> <p>11 Q. What is Mr. Schermerhorn's position in the</p> <p>12 company?</p> <p>13 A. President, CEO, owner.</p> <p>14 Q. Who would you say is responsible for the</p> <p>09:24:17 15 day-to-day running of IMG?</p> <p>16 MR. FREEMAN: Object to the extent it</p> <p>17 calls for speculation.</p> <p>18 A. Seth Schermerhorn.</p> <p>19 MR. APGOOD: Join.</p> <p>09:24:26 20 Q. Who is responsible for creating IMG's</p> <p>21 websites?</p> <p>22 MR. APGOOD: Objection, calls for</p> <p>23 speculation.</p> <p>24 MR. FREEMAN: Join.</p> <p>09:24:34 25 A. Both myself and Seth Schermerhorn.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. And how long have you been employed by IMG?</p> <p>2 A. Three years and ten months.</p> <p>3 Q. And what positions have you held at IMG?</p> <p>4 A. Graphic designer, photographer.</p> <p>09:29:48 5 Q. What position do you currently hold at IMG?</p> <p>6 A. Graphic designer.</p> <p>7 Q. When were you a photographer at IMG?</p> <p>8 A. Just whenever we are in need of pictures,</p> <p>9 whether it be stock photos or photos specific to</p> <p>09:30:09 10 product for one of our mainstream websites.</p> <p>11 Q. When you say stock photos, what do you mean?</p> <p>12 A. Buildings, trees, rocks.</p> <p>13 Q. When is the last time you were a photographer</p> <p>14 for IMG?</p> <p>09:30:29 15 A. It would probably have to be about a year ago</p> <p>16 when we were making the Pocket Bike website.</p> <p>17 Q. And how many graphic designers does IMG have?</p> <p>18 A. Just one. Myself.</p> <p>19 Q. Were you the first graphic designer at IMG?</p> <p>09:30:52 20 A. Yes.</p> <p>21 Q. What are your responsibilities as a graphic</p> <p>22 designer?</p> <p>23 A. I create websites, banner ads,</p> <p>24 advertisements, fliers.</p> <p>09:31:19 25 Q. When you say you create websites, what kind</p>

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<p style="text-align: right;">Page 22</p> <p>1 for content they are looking for.</p> <p>2 Q. And you testified that as a graphic designer</p> <p>3 you create advertisements for IMG. How do</p> <p>4 advertisements differ from banner ads?</p> <p>09:36:46 5 A. Banner ads are a specific size.</p> <p>6 Advertisements could be full pages or multiple pages.</p> <p>7 Q. And when you use the term advertisements,</p> <p>8 does that mean print advertisements, or --</p> <p>9 A. Yes, it could.</p> <p>09:37:04 10 Q. Does it mean electronic advertisements, as</p> <p>11 well?</p> <p>12 A. Yes.</p> <p>13 Q. And you testified that as a graphic designer</p> <p>14 you create fliers for IMG?</p> <p>09:37:18 15 A. I have created one flier, yes.</p> <p>16 Q. What was that flier?</p> <p>17 A. SoulCash.com.</p> <p>18 Q. And what was the SoulCash.com flier used for?</p> <p>19 A. Inside affiliate webmaster paychecks we</p> <p>09:37:36 20 insert the flier stating to advertise, advertise the</p> <p>21 other content that is in SoulCash.com.</p> <p>22 Q. Who do you report to at IMG?</p> <p>23 A. Seth Schermerhorn.</p> <p>24 Q. Do you prepare any regular reports in your</p> <p>09:38:04 25 position at IMG?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And when did you first become aware of the</p> <p>2 CAN-SPAM Act?</p> <p>3 A. Roughly two years ago.</p> <p>4 Q. How were you made aware of the CAN-SPAM Act?</p> <p>09:39:40 5 A. Online through a website that posts news in</p> <p>6 regards to Internet parking.</p> <p>7 Q. Were you given any training on the CAN-SPAM</p> <p>8 Act at IMG?</p> <p>9 A. Yes.</p> <p>09:39:57 10 Q. Can you describe that training?</p> <p>11 A. If I were to create any images or HTML code,</p> <p>12 that if it was going to be used, it must -- let me</p> <p>13 rephrase that.</p> <p>14 I would create two different versions of</p> <p>09:40:18 15 an advertisement: one would be CAN-SPAM approved and</p> <p>16 one would not.</p> <p>17 Q. And when you use the term image, can you --</p> <p>18 A. Picture.</p> <p>19 Q. When you create two different versions of an</p> <p>09:40:46 20 image, can you explain how one is CAN-SPAM compliant</p> <p>21 and the other would differ?</p> <p>22 MR. APGOOD: Objection to the extent it</p> <p>23 misstates the witness's prior answer as a predicate</p> <p>24 basis for the question.</p> <p>09:41:02 25 MR. FREEMAN: Join.</p>
<p style="text-align: right;">Page 23</p> <p>1 MR. FREEMAN: Object to the form of the</p> <p>2 question.</p> <p>3 A. No.</p> <p>4 Q. Do you supervise any employees of IMG?</p> <p>09:38:15 5 A. No.</p> <p>6 Q. Where were you employed before IMG?</p> <p>7 A. Trend West Resorts.</p> <p>8 Q. Did you work for any adult entertainment</p> <p>9 companies before IMG?</p> <p>09:38:36 10 A. I did not.</p> <p>11 Q. Are you familiar with the CAN-SPAM Act?</p> <p>12 A. Yes.</p> <p>13 Q. What is the basis for your knowledge</p> <p>14 regarding the CAN-SPAM Act?</p> <p>09:38:59 15 A. Can not contain any explicit pictures or</p> <p>16 text.</p> <p>17 Q. When you say it, what are you referring to?</p> <p>18 A. It?</p> <p>19 MR. FREEMAN: I'm going to object --</p> <p>09:39:16 20 MS. HASH: Can you read back his answer.</p> <p>21 (Reporter read back as requested the</p> <p>22 last answer.)</p> <p>23 Q. What can not contain any explicit pictures or</p> <p>24 text?</p> <p>09:39:20 25 A. Spam is email, so email.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. The CAN-SPAM one would have no explicit</p> <p>2 images or text.</p> <p>3 Q. Who told you to begin to create two different</p> <p>4 versions of images?</p> <p>09:41:22 5 A. Seth Schermerhorn.</p> <p>6 Q. When did he tell you to do this?</p> <p>7 A. At the time that we learned about CAN-SPAM.</p> <p>8 Q. Were you instructed to create two different</p> <p>9 versions of all images that you created?</p> <p>09:41:38 10 MR. FREEMAN: Object to the form of the</p> <p>11 question, and object to the extent it mischaracterizes</p> <p>12 prior testimony.</p> <p>13 A. No. Just whatever advertisement I was</p> <p>14 working on.</p> <p>09:41:48 15 Q. The advertisements that you create are</p> <p>16 available for affiliates to use to promote IMG's</p> <p>17 websites. Is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. And how do affiliates get access to these</p> <p>09:42:17 20 advertisements?</p> <p>21 MR. FREEMAN: Object to the form of the</p> <p>22 question to the extent it calls for speculation.</p> <p>23 If you know, you can answer.</p> <p>24 A. They become a member of SoulCash.com's</p> <p>09:42:24 25 webmaster-affiliate program, and the materials are, if</p>

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<p>1 we so choose, posted on the website for them to 2 down-load or link to. 3 Q. And so on the website, how are the 4 CAN-SPAM-compliant advertisements and the other 09:42:50 5 advertisements differentiated? 6 MR. FREEMAN: Object to the form of the 7 question. By the term the website, are you referring 8 to an affiliate's website or the SoulCash.com website? 9 Q. On the SoulCash.com website, how are the two 09:43:04 10 different versions of advertisements differentiated? 11 A. The CAN-SPAM, the actual advertisements, it 12 depends on the advertisement in question, or, I guess, 13 on an advertisement-to-advertisement basis, because 14 not all advertisements were put on SoulCash.com. Many 09:43:30 15 of them were kept off and were sent to webmasters on a 16 one-by-one basis. 17 Q. Okay. And the advertisements on the 18 SoulCash.com website, how are the two different 19 versions differentiated? 09:43:46 20 MR. FREEMAN: Object to the extent it 21 calls for speculation, and object to the extent it 22 mischaracterizes his prior testimony. 23 MR. APGOOD: I will join and object to the 24 form of the question, as well. 09:43:55 25 A. If one of the advertisements differed from</p>	<p>1 versions after January 1st 2004 to webmasters? 2 MR. APGOOD: Calls for speculation. 3 MR. FREEMAN: Join. 4 A. Not that I can recall. 09:45:12 5 Q. Have you been an affiliate of IMG at any 6 point? 7 A. Not of IMG, no. 8 Q. Have you been an affiliate of any other adult 9 entertainment company at any point? 09:45:44 10 A. No. 11 Q. Are you aware of any IMG employee who has 12 been an affiliate of IMG at any point? 13 A. No. 14 Q. What does the term spam mean to you? 09:45:56 15 A. Unsolicited email. 16 Q. And the term spammer? 17 A. Someone that sends unsolicited email. 18 Q. And what do you base this definition on? 19 A. Past knowledge of being an Internet surfer. 09:46:17 20 Q. If someone sends bulk commercial email that 21 was opted into, is that spam to you? 22 A. No. 23 MR. APGOOD: Objection. 24 MR. FREEMAN: Object to the form of the 09:46:35 25 question to the extent it calls for speculation.</p>
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<p>1 the other, there was a notice saying that this is 2 CAN-SPAM approved. 3 Q. And were there some advertisements that did 4 not have two versions? 09:44:15 5 A. Yes. 6 Q. And you said that some advertisements were 7 sent directly to affiliates. Is that correct? 8 A. Yes. 9 Q. And were two different versions of 09:44:28 10 advertisements sent to affiliates? 11 A. No. 12 MR. FREEMAN: Object to the form of the 13 question. 14 MR. APGOOD: Join. 09:44:34 15 Q. When advertisements were sent to affiliates, 16 how did IMG know whether to send the CAN-SPAM- 17 compliant version or the other version? 18 MR. FREEMAN: Object to the form of the 19 question. 09:44:47 20 A. We would only send the CAN-SPAM-compliant 21 version to a webmaster. 22 MR. APGOOD: I will join and object to the 23 form of the question to the extent it calls for 24 speculation. 09:44:59 25 Q. Did IMG ever send nonCAN-SPAM compliant</p>	<p>1 MR. APGOOD: Join. 2 Q. What is IMG's policy regarding spam? 3 A. We do not tolerate it. We have a term of 4 service on our website for webmasters' affiliates to 09:46:48 5 read before they join. It's section 2, paragraph 3. 6 Q. Is IMG's policy regarding spam written 7 anywhere else, to your knowledge? 8 A. Just in our terms of service, which is 9 usually linkable through all websites. 09:47:08 10 Q. Has IMG's policy regarding spam as written in 11 the terms of service for affiliates changed since 12 January 1st, 2004? 13 MR. FREEMAN: Object to the extent it 14 calls for speculation. 09:47:23 15 MR. APGOOD: Join. 16 A. No. We've never tolerated spam. 17 Q. And when you say never, has the provision 18 against spam been in terms of service for affiliates 19 since IMG began? 09:47:40 20 A. Yes. 21 MR. APGOOD: Objection, calls for 22 speculation. 23 MR. FREEMAN: Join. 24 Q. To your knowledge, did IMG do anything to 09:47:50 25 notify its affiliates of the CAN-SPAM Act?</p>

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<p>1 A. Yes.</p> <p>2 Q. What did IMG do?</p> <p>3 A. We sent out a newsletter via email to our</p> <p>4 webmasters.</p> <p>09:48:07 5 Q. What did that newsletter say?</p> <p>6 MR. FREEMAN: Object to the form of the</p> <p>7 question to the extent it calls for speculation.</p> <p>8 A. I can not recall.</p> <p>9 MR. APGOOD: Join.</p> <p>09:48:14 10 Q. And do you know when this newsletter went</p> <p>11 out?</p> <p>12 A. I'd have to estimate around the same time</p> <p>13 that the CAN-SPAM Act was approved.</p> <p>14 Q. It's your understanding that a newsletter</p> <p>09:48:34 15 went out to IMG's affiliates via email notifying them</p> <p>16 of the CAN-SPAM Act?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know anything else about this</p> <p>19 newsletter?</p> <p>09:48:45 20 A. No.</p> <p>21 Q. Are affiliates the same thing as webmasters?</p> <p>22 A. Yes.</p> <p>23 Q. Does IMG pay affiliates to bring potential</p> <p>24 new members to IMG's website?</p> <p>09:49:25 25 A. Yes.</p>	<p>1 into separate categories depending on how many joins</p> <p>2 they send to our websites. The more joins, the better</p> <p>3 their tier level they are.</p> <p>4 Q. What are the range of tier levels?</p> <p>09:51:12 5 A. One to three, if I can recall.</p> <p>6 Q. So, tier 1, what would an affiliate have to</p> <p>7 be to be in tier 1?</p> <p>8 MR. FREEMAN: Object to form and object to</p> <p>9 the extent it calls for a legal conclusion.</p> <p>09:51:26 10 If you know, you can answer.</p> <p>11 MR. APGOOD: Join.</p> <p>12 A. That's the bottom line. They wouldn't have</p> <p>13 to do anything if they didn't want to.</p> <p>14 Q. Okay. And how many joins would an affiliate</p> <p>09:51:39 15 have to bring to IMG to be a tier 3?</p> <p>16 A. All tiers are pretty much on a custom basis.</p> <p>17 If we feel that an affiliate is representing our</p> <p>18 affiliate program, we will move him up on a one-by-one</p> <p>19 basis, so there wasn't an automatic program that</p> <p>09:51:58 20 automatically bumps him up.</p> <p>21 Q. What other benefits does an affiliate get</p> <p>22 from being a tier 3?</p> <p>23 A. Either a better payout ratio or a higher --</p> <p>24 we have two different kinds. We have red share, which</p> <p>09:52:21 25 is a percentage of the sale, or a pay per join, they</p>
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<p>1 Q. Do you have any contact with IMG's</p> <p>2 affiliates?</p> <p>3 A. No.</p> <p>4 Q. Have you ever had any contact with IMG's</p> <p>09:49:36 5 affiliates?</p> <p>6 A. On a one-to-one basis. For example, if a</p> <p>7 webmaster needed a custom-sized banner for their</p> <p>8 website, I would be in direct contact with them.</p> <p>9 Q. So, you have done custom work for IMG's</p> <p>09:50:00 10 affiliates?</p> <p>11 A. Yes.</p> <p>12 Q. What other kind of custom work have you done?</p> <p>13 A. Nothing.</p> <p>14 Q. In the instances when you made a custom-sized</p> <p>09:50:17 15 banner for an affiliate, how did they contact you?</p> <p>16 A. Usually via email or ICQ, which is an instant</p> <p>17 messaging program.</p> <p>18 Q. Is custom work something that IMG does for</p> <p>19 all of its affiliates?</p> <p>09:50:34 20 A. No.</p> <p>21 Q. How do you know which affiliates to do custom</p> <p>22 work for?</p> <p>23 A. They have a certain tier level.</p> <p>24 Q. Can you explain this tier-level system?</p> <p>09:50:53 25 A. Tier level is basically we'll lump webmasters</p>	<p>1 would get a higher pay-per-join fee.</p> <p>2 Q. Have you ever done custom work for an</p> <p>3 affiliate to use in an email?</p> <p>4 A. No.</p> <p>09:52:41 5 Q. To your knowledge, does IMG allow email</p> <p>6 campaigns by affiliates that are opted into?</p> <p>7 MR. FREEMAN: Object to the extent the</p> <p>8 question is asked and answered.</p> <p>9 MR. APGOOD: Join.</p> <p>09:52:55 10 A. If it's opted in, yes.</p> <p>11 Q. Yes, IMG does allow the campaign?</p> <p>12 A. As far as I know, opted in emails, yes.</p> <p>13 Q. Who at IMG runs the SoulCash.com affiliate</p> <p>14 program?</p> <p>09:53:18 15 A. Seth Schermerhorn.</p> <p>16 MR. FREEMAN: Object to the form of the</p> <p>17 question.</p> <p>18 MR. APGOOD: Join.</p> <p>19 Q. Who at IMG has direct contact with IMG's</p> <p>09:53:29 20 affiliates?</p> <p>21 MR. FREEMAN: Object to the extent it</p> <p>22 calls for speculation.</p> <p>23 MR. APGOOD: Join.</p> <p>24 A. Seth Schermerhorn.</p> <p>09:53:33 25 Q. Anyone else?</p>

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<p style="text-align: right;">Page 34</p> <p>1 MR. FREEMAN: Same objection. 2 MR. APGOOD: Join. 3 A. Adam Welch used to have direct contact. He's 4 no longer a member of the company now. 09:53:46 5 Q. How does someone become an affiliate of IMG? 6 A. By going to SoulCash.com and signing up. 7 Q. And are you familiar with the sign-up 8 process? 9 A. Yes. 09:54:04 10 Q. What information does a potential affiliate 11 have to provide to IMG as a part of the sign-up 12 process? 13 A. Full name, address, tax payer ID, or their 14 social, and they must agree to our terms of service, 09:54:20 15 and telephone contact information and email. 16 Q. And is an affiliate automatically approved if 17 they submit this information? 18 A. Yes. 19 Q. Does IMG do anything to verify the physical 09:54:41 20 address provided by a potential affiliate? 21 MR. FREEMAN: Object to form, object to 22 the extent it calls for speculation. 23 A. No. 24 MR. APGOOD: Join. 09:54:51 25 Q. Did you work on the affiliate sign-up page?</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. APGOOD: Join. 2 A. Because they are selling -- they're using our 3 content to sell joins to our websites. 4 Q. And does IMG provide services to affiliates 5 to help them bring joins to IMG's website? 6 MR. FREEMAN: Object to the extent it 7 calls for speculation. 8 A. Can you explain services? 9 MR. APGOOD: Join. 09:56:41 10 Q. Yes. What does IMG do to help its affiliates 11 promote IMG's website? 12 A. Basically everything that's in our content 13 page. Like I have mentioned before, advertisements, 14 banners. If they need help on where to put them, we 09:57:00 15 can suggest where to put them, but it's only a 16 suggestion. 17 Q. If an affiliate has a question, can they 18 contact IMG's employees? 19 A. Yes. 09:57:16 20 Q. And how would an affiliate do that? 21 A. Either website telephone number or email or 22 instant message. 23 Q. And who at IMG would a webmaster contact with 24 questions? 09:57:31 25 A. If it's technical support, it would be</p>
<p style="text-align: right;">Page 35</p> <p>1 A. No. 2 Q. Do you know who did? 3 A. Seth Schermerhorn. 4 Q. If an affiliate is terminated and then goes 09:55:14 5 through the sign-up process again and submits new 6 information, is there any way for IMG to determine 7 that they have been previously terminated? 8 MR. FREEMAN: Object to the extent it 9 relies on evidence not yet established, and object to 09:55:30 10 the form of the question. 11 MR. APGOOD: I join, and object to the 12 extent it calls for speculation. 13 A. I do not know. 14 Q. What does an affiliate do to make money after 09:55:45 15 they have submitted this application and are approved? 16 MR. APGOOD: Objection, calls for 17 speculation. 18 MR. FREEMAN: And to the extent the 19 question has been asked and answered. 09:55:52 20 A. They'll use the content inside SoulCash.com 21 to display on their own websites or advertisements. 22 Q. And why would an affiliate do that? What's 23 the purpose? 24 MR. FREEMAN: Object to the extent it 09:56:12 25 calls for speculation.</p>	<p style="text-align: right;">Page 37</p> <p>1 submitted into our technical support website, and 2 someone from our support staff, which is Seth 3 Schermerhorn, would answer it, or if it's email, it 4 would go to whoever would email, which is usually Seth 09:57:52 5 Schermerhorn, or Adam Welch at the time, and if it's a 6 telephone, it would go into our automatic telephone 7 system, and they would select the person from the 8 menu. 9 Q. So, you testified previously that CyberHeat 09:58:20 10 provides banner ads, advertisements, fliers to 11 affiliates. Any other kind of promotional material? 12 MR. FREEMAN: Objection, CyberHeat? 13 Q. Sorry. IMG. 14 A. Can you rephrase the question now? 09:58:35 15 Q. Yes. You testified that IMG provides banner 16 ads, advertisements, banner ads and advertisements to 17 affiliates to promote IMG's websites. Are there any 18 other promotional materials that IMG provides to 19 affiliates? 09:58:52 20 MR. FREEMAN: Objection to the extent it 21 calls for speculation. 22 Answer what you know. 23 MR. APGOOD: Join. 24 A. No. 09:58:59 25 Q. And can the banner ads and advertisements</p>

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<p style="text-align: right;">Page 38</p> <p>1 that IMG makes available to affiliates be used in 2 emails by affiliates to promote IMG's websites? 3 MR. APGOOD: Object, calls for 4 speculation. 09:59:16 5 MR. FREEMAN: Join that objection, and 6 object to the form of the question. 7 A. Yes. 8 Q. If IMG does a new promotion to attract 9 affiliates, would you be responsible for designing 09:59:39 10 that new promotion? 11 A. Yes, if it was, if it was something that was 12 assigned to me to do. 13 Q. How does IMG let affiliates know about new 14 promotions? 09:59:52 15 MR. APGOOD: Objection, calls for 16 speculation. 17 MR. FREEMAN: Join. 18 A. It's either posted within SoulCash.com, or it 19 goes out in the webmaster-affiliate newsletter. 10:00:02 20 Q. And how does the webmaster-affiliate 21 newsletter get to affiliates? 22 MR. APGOOD: Objection, calls for 23 speculation. 24 A. Email. 10:00:13 25 Q. Are those newsletters ever sent by postal</p>	<p style="text-align: right;">Page 40</p> <p>1 pretty similar to sales. 2 Q. How does a join and a sale differ? 3 A. There's a ratio -- well, join and sale are 4 the same meaning, I guess, for these websites, but 10:01:37 5 there's a ratio per how many users visit the site, per 6 how many users join. 7 Q. And does IMG pay an affiliate for bringing a 8 visitor to IMG's website? 9 A. No. 10:01:59 10 MR. APGOOD: Objection, calls for 11 speculation. 12 Q. Does IMG pay affiliates for bringing users 13 who join IMG's website? 14 MR. APGOOD: Objection, calls for 10:02:10 15 speculation. 16 A. Yes. 17 MR. FREEMAN: As well as objection, asked 18 and answered. 19 Q. And does IMG provide statistics on how many 10:02:23 20 joins an affiliate has brought to IMG's websites to 21 that affiliate? 22 A. Yes. 23 MR. APGOOD: Objection, calls for 24 speculation. 10:02:30 25 Q. How does IMG provide statistics like this to</p>
<p style="text-align: right;">Page 39</p> <p>1 mail to the physical addresses provided by affiliates? 2 A. No. 3 Q. Does IMG ask affiliates what kind of means 4 they're using to promote IMG's website? 10:00:38 5 MR. FREEMAN: Object to the form of the 6 question, object to the extent it calls for 7 speculation. 8 A. I do not know. 9 MR. APGOOD: Join. 10:00:43 10 Q. Have you ever asked an affiliate what kind of 11 means they're using to promote IMG's website? 12 A. No. 13 Q. Does IMG ever provide lists of email 14 addresses to affiliates? 10:01:03 15 A. No. 16 MR. APGOOD: Objection, calls for 17 speculation. 18 MR. FREEMAN: Join. 19 A. No. 10:01:06 20 Q. Does IMG provide sales statistics to 21 affiliates? 22 MR. APGOOD: Objection, calls for 23 speculation. 24 MR. FREEMAN: Join. 10:01:18 25 A. Sales -- we have join statistics, which are</p>	<p style="text-align: right;">Page 41</p> <p>1 affiliates? 2 MR. APGOOD: Objection, calls for 3 speculation. 4 A. Through the members' area within 10:02:39 5 SoulCash.com. 6 Q. Is there some sort of database that this 7 information is contained in? 8 A. I would think so. I do not know, though. 9 Q. So, you haven't worked on a database like 10:02:54 10 that? 11 A. No. 12 MR. FREEMAN: Objection, form of the 13 question. 14 MR. APGOOD: Join. 10:02:58 15 Q. To your knowledge, what other statistics does 16 IMG provide to affiliates? 17 A. That's all. 18 MR. FREEMAN: Objection, speculation. 19 MR. APGOOD: Join. 10:03:06 20 Q. To your knowledge, does IMG track the amount 21 of usage of its sites by members? 22 MR. FREEMAN: Object to the form of the 23 question. 24 A. Not that I know of. 10:03:29 25 Q. And to your knowledge, does IMG track how</p>

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<p>1 members navigate through IMG's websites?</p> <p>2 A. Not that I know of.</p> <p>3 Q. To your knowledge, have any affiliates of</p> <p>4 IMG's affiliate program promoted IMG's websites</p> <p>10:03:57 5 through bulk email messages?</p> <p>6 A. Can you rephrase the question, please?</p> <p>7 Q. Yes. To your knowledge, do you know of any</p> <p>8 IMG affiliates to have promoted IMG websites through</p> <p>9 bulk email messages?</p> <p>10:04:12 10 A. No, I do not.</p> <p>11 MR. FREEMAN: Object to form, also object</p> <p>12 to foundation.</p> <p>13 MR. APGOOD: Join.</p> <p>14 Q. IMG pays affiliates for bringing new members</p> <p>10:04:27 15 who join to IMG's websites. Is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And how does IMG know which affiliate to pay</p> <p>18 when a new member joins IMG's website?</p> <p>19 MR. FREEMAN: Object to the extent it</p> <p>10:04:44 20 calls for speculation.</p> <p>21 MR. APGOOD: Join.</p> <p>22 A. When a surfer signs up via the website, they</p> <p>23 usually sign up through a webmaster's own link, which</p> <p>24 has the user ID embedded into it, so when that user</p> <p>10:04:59 25 signs up on a site, that webmaster-affiliate ID is</p>	<p>1 A. No.</p> <p>2 Q. Have you been a part of any discussions at</p> <p>3 IMG about tracking how affiliates direct new members</p> <p>4 to IMG's website?</p> <p>10:06:29 5 A. No.</p> <p>6 Q. Who sets the rates at which IMG's affiliates</p> <p>7 are paid?</p> <p>8 A. Seth Schermerhorn.</p> <p>9 Q. Do you know how many affiliates IMG has?</p> <p>10:06:43 10 A. No.</p> <p>11 Q. Could you give an estimate of how many</p> <p>12 affiliates IMG has?</p> <p>13 A. No.</p> <p>14 Q. Does IMG promote its own websites outside the</p> <p>10:07:21 15 SoulCash-affiliate program?</p> <p>16 A. No.</p> <p>17 Q. Has IMG ever promoted its own websites by</p> <p>18 mass email?</p> <p>19 MR. FREEMAN: Object to the form of the</p> <p>10:07:35 20 question.</p> <p>21 A. No.</p> <p>22 Q. Does IMG advertise to attract new affiliates?</p> <p>23 A. Yes.</p> <p>24 Q. Where?</p> <p>10:07:51 25 A. Various website forums and through the</p>
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<p>1 embedded into it and it is credited with that sale.</p> <p>2 Q. Does each affiliate have a unique user ID?</p> <p>3 A. Yeah.</p> <p>4 Q. What does that user ID consist of? Is it a</p> <p>10:05:18 5 series of numbers?</p> <p>6 MR. FREEMAN: Object to the extent it</p> <p>7 calls for speculation.</p> <p>8 A. It's unique to whatever they want.</p> <p>9 Q. And who at IMG is responsible for tracking</p> <p>10:05:36 10 this user ID information so IMG knows which affiliate</p> <p>11 to pay?</p> <p>12 MR. FREEMAN: Object to the form to the</p> <p>13 extent it calls for speculation.</p> <p>14 MR. APGOOD: Join.</p> <p>10:05:49 15 A. Seth Schermerhorn.</p> <p>16 Q. Does IMG track what method of advertising an</p> <p>17 affiliate uses to direct a new member to IMG's</p> <p>18 website?</p> <p>19 A. No.</p> <p>10:06:04 20 Q. Are you aware of any method whereby IMG could</p> <p>21 track what method of advertising an affiliate used to</p> <p>22 direct a new member to IMG's website?</p> <p>23 MR. FREEMAN: Object to form, calls for</p> <p>24 speculation, object to foundation.</p> <p>10:06:18 25 MR. APGOOD: Join.</p>	<p>1 webmaster-affiliate program.</p> <p>2 Q. Has IMG ever used mass emails to attract new</p> <p>3 affiliates?</p> <p>4 A. No.</p> <p>10:08:09 5 Q. Are affiliates paid more based on the method</p> <p>6 the affiliate used to attract a new member to IMG's</p> <p>7 website?</p> <p>8 MR. FREEMAN: Object to the extent it</p> <p>9 calls for speculation.</p> <p>10:08:40 10 MR. APGOOD: Objection, foundation.</p> <p>11 A. No.</p> <p>12 Q. How does the process work whereby a potential</p> <p>13 new member comes to an IMG website and signs up to be</p> <p>14 a member?</p> <p>10:08:55 15 MR. FREEMAN: Objection to the extent it</p> <p>16 calls for speculation, objection, asked and answered.</p> <p>17 MR. APGOOD: Join.</p> <p>18 A. The webmaster if so chooses would join</p> <p>19 through the members' join page, and --</p> <p>10:09:09 20 Q. When you say webmaster, I'm asking you about</p> <p>21 a new member.</p> <p>22 A. A new member, surfer?</p> <p>23 Q. Yes. Is that the term you use, a surfer, a</p> <p>24 new member who's going to sign up not to be an</p> <p>10:09:25 25 affiliate, but a new member?</p>

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<p style="text-align: right;">Page 46</p> <p>1 MR. FREEMAN: Same objections. 2 A. Reask the question again, then. 3 Q. How does the process work if a surfer comes 4 to IMG's website and wants to sign up? What do they 10:09:37 5 have to do? 6 MR. FREEMAN: Objection to the extent it 7 calls for speculation. 8 MR. APGOOD: Join. 9 A. If the surfer in question comes to the 10:09:47 10 website, they usually are given a tour, which is a 11 one-to-two-page website, which shows the content that 12 is available inside that website. If that user so 13 chooses, they can join on the join page. 14 Q. And so after the user does the tour and comes 10:10:18 15 to the join page, does the potential new member have 16 to answer any questions on the join page? 17 MR. FREEMAN: Objection to the extent it 18 calls for speculation, foundation. 19 MR. APGOOD: Join. 10:10:31 20 A. To my knowledge, all they have to do is fill 21 out a user and password info and credit card 22 information. 23 Q. Have you ever worked on the graphics for any 24 of the join pages? 10:10:41 25 A. Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 MR. APGOOD: Join. 2 A. It could be possible, but we haven't done it. 3 Q. To your knowledge, where in this subscription 4 process does a new member have to pay? 10:12:05 5 A. It's a recurring payment. As soon as they 6 sign up, it will always be recurring unless they 7 cancel. 8 Q. So, where in the subscription process does 9 the new member enter their payment information? 10:12:21 10 A. On the join page. 11 Q. What methods of payment does IMG accept? 12 A. Credit card. 13 Q. Anything else? 14 A. It's a 1-800 number you can call and 10:12:45 15 subscribe through, as well. 16 Q. To your knowledge, does IMG use any 17 third-party payment processors? 18 A. Yes. 19 Q. What third-party payment processors does IMG 10:12:59 20 use? 21 A. Paycom. 22 Q. Any others? 23 A. No. 24 Q. Are you familiar with the term cookie as it 10:13:17 25 is used in the computer industry?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. To your knowledge, do any of the join pages 2 have drop-down menus where the new member has to 3 answer questions? 4 A. No. 10:10:54 5 Q. To your knowledge, has IMG ever considered 6 asking new members as a part of this join process how 7 they got to IMG's website? 8 MR. FREEMAN: Object to the form of the 9 question. 10:11:05 10 A. No. 11 Q. Have you been a part of any discussions at 12 IMG regarding asking new members how they got to IMG's 13 website? 14 A. No. 10:11:18 15 Q. Are you aware of any technical impediments to 16 asking potential members how they got to IMG's 17 website? 18 MR. FREEMAN: Objection, speculation, and 19 object to the form of the question. 10:11:28 20 MR. APGOOD: Join. 21 A. Technical impediments. Can you explain? 22 Q. Yes. Do you think it would be possible based 23 on you having worked on these join pages to ask new 24 members how they got to IMG's website? 10:11:45 25 MR. FREEMAN: Same objection.</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes. 2 Q. What is a cookie in computer speak? 3 A. It's a saved-information file on a certain 4 website. 10:13:33 5 Q. Does IMG use cookies? 6 MR. FREEMAN: Objection to the extent it 7 calls for speculation. 8 MR. APGOOD: Join. 9 A. On a case-by-case basis for a website, a 10:13:44 10 website basis. 11 Q. Okay. What does IMG use cookies for? 12 A. Webmaster logins, or user logins. 13 Q. When you say webmaster logins? 14 A. Webmaster-affiliate logins for SoulCash.com. 10:14:04 15 Q. How would IMG use a cookie for webmaster 16 logins? 17 MR. FREEMAN: Objection to the extent it 18 calls for speculation. 19 MR. APGOOD: Join. 10:14:11 20 A. When they try to access our webmaster- 21 affiliate program, when they click login, that 22 information is automatically displayed for them. 23 Their login info, that is. 24 Q. Okay. How does IMG use cookies for user 10:14:27 25 login?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. Same principle. When a user or member of a 2 certain site goes to that site to access the content, 3 when they click login, their information is 4 automatically populated, so they can join without 10:14:40 5 entering in their info. 6 Q. Does IMG use cookies for anything else? 7 MR. APGOOD: Objection, calls for 8 speculation. 9 MR. FREEMAN: Join. 10:14:47 10 A. Not that I can recall. 11 Q. What terms of subscription does IMG offer to 12 new members? 13 A. Terms of subscription? 14 Q. Yes. 10:15:09 15 A. As far as I know, there are three different 16 kinds: there is trial, 30 day, and full year, I 17 believe. 18 Q. Are you aware of any methods IMG uses to 19 monitor their affiliates? 10:15:49 20 MR. FREEMAN: Objection to the extent it 21 calls for speculation, object to the form of the 22 question. 23 MR. APGOOD: Join. 24 A. Rephrase the question, please. 10:15:56 25 Q. Do you know of any means whereby IMG monitors</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. What was your answer? 2 A. No. 3 Q. To your knowledge, since January 1st, 2004 4 has IMG ever required affiliates to send samples of 10:17:09 5 the email campaigns they are going to be using? 6 MR. FREEMAN: Object to the form of the 7 question, assumes facts not in evidence, object to the 8 extent it mischaracterizes his prior testimony. 9 MR. APGOOD: Object to the extent that it 10:17:22 10 contravenes prior testimony. 11 Q. You testified previously that IMG does allow 12 affiliates to use email campaigns if they've been 13 opted into. Is that correct? 14 A. Correct. 10:17:36 15 Q. Since January 1st, 2004, has IMG ever 16 required affiliates to send samples of these email 17 campaigns to make sure they're in compliance with the 18 CAN-SPAM Act? 19 A. No. 10:17:52 20 Q. To your knowledge, since May of 2004 has IMG 21 ever provided affiliates with sample emails that are 22 in compliance with the CAN-SPAM Act and Adult Labeling 23 Rule? 24 A. No. 10:18:04 25 MR. FREEMAN: Object to the question to</p>
<p style="text-align: right;">Page 51</p> <p>1 their affiliates' activities? 2 MR. FREEMAN: Same objection. 3 A. Through the webmaster-affiliate program, 4 through the administration. 10:16:09 5 Q. How does IMG monitor affiliates through the 6 webmaster-affiliate program? 7 A. I don't know. 8 MR. APGOOD: Objection, calls for 9 speculation. 10:16:20 10 MR. FREEMAN: Join. 11 Q. Do you know of any methods whereby IMG 12 monitors affiliates for compliance with the CAN-SPAM 13 Act? 14 MR. FREEMAN: Objection to the extent it 10:16:38 15 calls for speculation. 16 MR. APGOOD: Join. Also object to the 17 extent it calls for a legal conclusion. 18 MR. FREEMAN: Join. 19 A. Rephrase the question, please. 10:16:45 20 Q. Do you know of anything that IMG does to 21 monitor affiliates to see if they're complying with 22 the CAN-SPAM Act? 23 A. No. 24 MR. APGOOD: Same objection. 10:16:55 25 MR. FREEMAN: Same objection.</p>	<p style="text-align: right;">Page 53</p> <p>1 the extent it calls for speculation. 2 Q. Did IMG have affiliates prior to January 1st, 3 2004? 4 A. Yes. 10:18:18 5 Q. Did existing affiliates have to sign an 6 agreement stating that they had read the CAN-SPAM law 7 when it went into effect? 8 MR. FREEMAN: Object to the extent it 9 calls for speculation. 10:18:39 10 A. I don't know. 11 (Discussion off record.) 12 Q. Has IMG ever received a complaint from an 13 individual who was the recipient of unsolicited 14 commercial emails? 10:39:38 15 MR. FREEMAN: Objection to the extent it 16 calls for speculation. 17 MR. APGOOD: Join. 18 A. Not that I'm aware of. 19 Q. So, you have never handled a spam complaint 10:39:48 20 personally? 21 A. No. 22 Q. Are you aware if IMG has a formal policy 23 about how to handle spam complaints? 24 A. No. 10:40:02 25 Q. To your knowledge, has IMG ever terminated an</p>

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<p style="text-align: right;">Page 62</p> <p>1 that affiliates only used CAN-SPAM-compliant versions 2 of images in their email campaigns? 3 A. Yes. 4 MR. APGOOD: Same objection. 10:49:56 5 MR. FREEMAN: Join. 6 A. Yes, there are terms of service. 7 Q. How by the terms of service did IMG ensure 8 compliance? 9 MR. APGOOD: Objection, calls for 10:50:12 10 speculation. 11 MR. FREEMAN: Join. 12 A. In our terms of service section 2, paragraph 13 3 states that we do not tolerate spam. 14 Q. Any other ways? 10:50:24 15 MR. APGOOD: Object to the form of the 16 question. 17 MR. FREEMAN: Join. 18 A. I don't know. 19 Q. Are you familiar with the term hyperlink? 10:50:34 20 A. Yes. 21 Q. What is a hyperlink? 22 A. A link a surfer can click that will redirect 23 them to another page. 24 Q. Have you ever embedded hyperlinks into 10:50:47 25 graphics you design for IMG?</p>	<p style="text-align: right;">Page 64</p> <p>1 speculation. 2 MR. FREEMAN: Join. 3 A. Yes. 4 Q. Do you recognize the picture in this exhibit? 10:52:28 5 A. No. 6 Q. Do you recognize anything in this exhibit? 7 A. I recognize it as a banner we once used to 8 use. 9 MR. APGOOD: Would you mind reading the 10:52:53 10 last response. 11 (Reporter read back as requested 12 the last answer.) 13 MR. APGOOD: Thank you. 14 Q. What term would you use to describe the box 10:52:58 15 under the subject line above "click here to be 16 removed"? Is that an image or a picture, so we are on 17 the same page? 18 A. This right here, "click here to be removed"? 19 Q. The box above. 10:53:13 20 A. That's a banner. 21 Q. Do you recognize the model in this exhibit? 22 A. No. 23 Q. Is this banner the property of IMG? 24 MR. FREEMAN: Objection to the extent it 10:53:31 25 calls for speculation, and object to the extent it</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes. 2 Q. Can you explain? 3 A. How it's done? 4 Q. Or why -- can you explain why you embedded 10:51:02 5 hyperlinks into graphics you designed for IMG? 6 MR. FREEMAN: Objection to the extent it 7 calls for speculation. 8 MR. APGOOD: Join. 9 A. Usually a graphic will have a click here or 10:51:11 10 motion-to-action button that will signify the user to 11 click here to redirect them to another site. 12 Q. And so the advertisements you create for 13 affiliates to use, they generally have hyperlinks 14 embedded in the graphics to direct potential users to 10:51:32 15 IMG's website? 16 MR. FREEMAN: Objection to the extent it 17 calls for speculation. 18 MR. APGOOD: Object to the form of the 19 question to the extent it misstates the technology 10:51:41 20 involved. 21 A. Yes, in most cases. 22 Q. I'm handing you what's been previously marked 23 Government's Exhibit-21. 24 Is XXXSALSA.com a website owned by IMG? 10:52:16 25 MR. APGOOD: Objection, calls for</p>	<p style="text-align: right;">Page 65</p> <p>1 calls for a legal conclusion. 2 MR. APGOOD: Join. 3 A. Yes. 4 Q. Did you design this banner? 10:53:41 5 A. No. 6 Q. Are you aware if someone else from IMG 7 designed this banner? 8 A. I do not know. 9 Q. Are you aware if there's a hyperlink in this 10:53:58 10 banner? 11 A. No. 12 Q. Would it be typical that the hyperlink would 13 be embedded into this banner? 14 MR. FREEMAN: Object to the form of the 10:54:06 15 question, and to the extent it calls for speculation. 16 MR. APGOOD: Join. 17 A. I do not. 18 Q. Looking at the body of this email, do you see 19 a means whereby a recipient can decline to opt out 10:54:27 20 from receiving further email messages from this 21 sender? 22 A. Yes. 23 Q. Where is that? 24 A. Below the banner it says, "click here to be 10:54:36 25 removed."</p>